IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 15532 of 2006(Y)

OS.104/2004 of SUB COURT, PALA
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PETITIONER:

JOSEPH JAMES, S/O. JAMES,
KUTARAPPALLIL HOUSE, MELAMBARA, THALAPALAM, PALA.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS:

ROY JOSEPH,
KARIYANKAL HOUSE, KADANADU, PALA (VIA),
KOTTAYAM DISTRICT.

BY ADV. SRI.P.J.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.15532/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. 104/04 OF THE COURT OF THE SUBORDINATE JUDGE , PALA.

EXT.P2:- COPY OF THE IA. NO.356/06 FILED BY THE PETITIONER.

EXT.P2 (a):- COPY OF THE IA. NO.354/06 FILED BY THE PETITIONER.

EXT.P2(b):- COPY OF THE JOINT PETITION(I.A. NO.355/06) FILED BY THE PETITONER AND RESPONDENT.

EXT.P3:- COPY OF THE ORDER DT. 6.3.06 IN IA. 356/06 OF THE HONOURABLE SUBORDINATE JUDGE PALA.

EXT.P3(a):- COPY OF THE ORDER DT. 6.3.06 IN IA. 354/06 OF THE HONOURABLE SUBORDINATE JUDGE , PALA.

EXT.P3(b):- COPY OF THE ORDER DT. 6.3.06 IN IA. NO.355/06 OF THE HONOURABLE SUBORDINATE JUDGE, PALA.

/TRUE COPY/

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PIUS C. KURIAKOSE, J.

W.P.(C) No. 15532 OF 2006

Dated this the 6th day of July, 2007

JUDGMENT

The Writ Petition is no longer defective since the petitioner and respondents are before me through counsel.

2. A suit for specific performance of a contract for sale of immovable property was decreed ex-parte by the trial court and thereafter the parties settled the issues between themselves. In order to have a formal recording of the settlement, three petitions were filed by the petitioner who was the defendant in the suit. One for setting aside the ex-parte decree, another for condonation of delay which had been caused in filing of the above application and the third one was for recording the joint compromise petition which had been filed by all the parties. One of the terms in the compromise was that ½ of the court fee which had been remitted on the plaint be refunded, as to be adjusted between the plaintiff and defendant. The learned Subordinate Judge passed Exts.P3, P3(a) and P3(b) orders and dismissed all the petitions on technical reasons.

Having regard to the submissions addressed before me by the learned counsel on either sides and Section 89, the newly introduced Section in the Code of Civil Procedure by the amending Act 46 of 1999

which makes it obligatory for courts to encourage out of court settlements between parties, I am of the view that it was against the spirit of Section 89 that the learned Judge rejected the three applications filed by the petitioner. The petitions were not opposed at all by the respondents. Applications were rejected on technical reasons only. I set aside the impugned orders and allow all the applications. One half of the court fees paid on the plaint is ordered to be refunded to the Advocate for the plaintiff , Sri.Johny Abraham, on his filing memo before the court below.

PIUS C. KURIAKOSE, JUDGE

btt